

## Federal Maritime Commission

## § 515.23

members other forms of financial responsibility, as specified by this section, for damages, reparations or penalties not covered by a member's individual financial responsibility coverage, such additional coverage must:

(i) Allow claims to be made in the United States directly against the group or association's Surety, Insurer or Guarantor for damages against each covered member ocean transportation intermediary arising from each covered member ocean transportation intermediary's transportation-related activities under the Act, or order for reparations issued pursuant to section 11 of the Act, or any penalty assessed against each covered member ocean transportation intermediary pursuant to section 13 of the Act; and

(ii) Be for an amount up to the amount determined in accordance with § 515.21(b), taking into account a member's individual financial responsibility coverage already in place. In the event of a claim against a group bond, the bond must be replenished up to the original amount of coverage within 30 days of payment of the claim; and

(iii) be in excess of a member's individual financial responsibility coverage already in place; and

(6) The coverage provided by the group or association of ocean transportation intermediaries on behalf of its members shall be provided by:

(i) in the case of a surety bond, a surety company found acceptable to the Secretary of the Treasury and issued by such a surety company on Form FMC-69; and

(ii) in the case of insurance and guaranty, a firm having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization, Underwriters at Lloyd's, or surplus line insurers named on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners and issued by such firms on Form FMC-67 and Form FMC-68, respectively.

(e) All forms and documents for establishing financial responsibility of ocean transportation intermediaries prescribed in this section shall be sub-

mitted to the Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573. Such forms and documents must clearly identify the name; trade name, if any; and the address of each ocean transportation intermediary.

[64 FR 11171, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002]

### § 515.23 Claims against an ocean transportation intermediary.

The Commission or another party may seek payment from the bond, insurance, or other surety that is obtained by an ocean transportation intermediary pursuant to this section. (See also § 545.3 of this chapter.)

(a) *Payment pursuant to Commission order.* If the Commission issues an order for reparation pursuant to sections 11 or 14 of the Act, or assesses a penalty pursuant to section 13 of the Act, a bond, insurance, or other surety shall be available to pay such order or penalty.

(b) *Payment pursuant to a claim.* (1) If a party does not file a complaint with the Commission pursuant to section 11 of the Act, but otherwise seeks to pursue a claim against an ocean transportation intermediary bond, insurance or other surety for damages arising from its transportation-related activities, it shall attempt to resolve its claim with the financial responsibility provider prior to seeking payment on any judgment for damages obtained. When a claimant seeks payment under this section, it simultaneously shall notify both the financial responsibility provider and the ocean transportation intermediary of the claim by certified mail, return receipt requested. The bond, insurance, or other surety may be available to pay such claim if:

(i) The ocean transportation intermediary consents to payment, subject to review by the financial responsibility provider; or

(ii) The ocean transportation intermediary fails to respond within forty-five (45) days from the date of the notice of the claim to address the validity of the claim, and the financial responsibility provider deems the claim valid.

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(2) If the parties fail to reach an agreement in accordance with paragraph (b)(1) of this section within ninety (90) days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any final judgment for damages obtained from an appropriate court. The financial responsibility provider shall pay such judgment for damages only to the extent they arise from the transportation-related activities of the ocean transportation intermediary ordinarily within 30 days, without requiring further evidence related to the validity of the claim; it may, however, inquire into the extent to which the judgment for damages arises from the ocean transportation intermediary's transportation-related activities.

(c) The Federal Maritime Commission shall not serve as depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgment, or order for reparation.

[64 FR 11171, Mar. 8, 1999, as amended at 65 FR 26512, May 8, 2000; 65 FR 33480, May 24, 2000]

#### § 515.24 Agent for service of process.

(a) Every ocean transportation intermediary not located in the United States and every group or association of ocean transportation intermediaries not located in the United States which provides financial coverage for the financial responsibility of a member ocean transportation intermediary shall designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas.

(b) If the designated legal agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the legal agent for service of process. Any person serving the Secretary must also send to the ocean transportation intermediary, or group or association of ocean transportation intermediaries which provide financial coverage for the financial responsibilities of a member ocean transportation intermediary, by registered mail, return receipt requested, at its address published in its tariff, a copy of each document served upon the Sec-

retary, and shall attest to that mailing at the time service is made upon the Secretary.

(c) Service of administrative process, other than subpoenas, may be effected upon the legal agent by mailing a copy of the document to be served by certified or registered mail, return receipt requested. Administrative subpoenas shall be served in accordance with § 502.134 of this chapter.

(d) Designations of resident agent under paragraphs (a) and (b) of this section and provisions relating to service of process under paragraph (c) of this section shall be published in the ocean transportation intermediary's tariff, when required, in accordance with part 520 of this chapter.

(e) Every ocean transportation intermediary using a group or association of ocean transportation intermediaries to cover its financial responsibility requirement under § 515.21(b) shall publish the name and address of the group or association's resident agent for receipt of judicial and administrative process, including subpoenas, in its tariff, when required, in accordance with part 520 of this chapter.

#### § 515.25 Filing of proof of financial responsibility.

(a) *Filing of proof of financial responsibility.* Upon notification by the Commission by certified U.S. mail or other method reasonably calculated to provide actual notice that the applicant has been approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Consumer Complaints and Licensing, proof of financial responsibility in the form and amount prescribed in § 515.21. No tariff shall be published until a license is issued, if applicable, and proof of financial responsibility is provided. No license will be issued until the Commission is in receipt of valid proof of financial responsibility from the applicant. If more than six (6) months elapse between issuance of the notification of qualification and receipt of the proof of financial responsibility, the Commission may, at its discretion, undertake a supplementary investigation to determine the applicant's continued qualification, for which a fee is required under § 515.5(b)(3). Should the applicant